

108TH CONGRESS
1ST SESSION

H. R. 1370

To provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2003

Mr. WYNN (for himself and Mr. BURR) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Interstate Transmission Act”.

4 (b) TABLE OF CONTENTS.—The table of contents is
5 as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Sustainable transmission networks rulemaking.
- Sec. 4. Electric reliability standards.
- Sec. 5. Disposition of property.
- Sec. 6. Promotion of voluntary development of regional transmission organiza-
tions, independent transmission providers, and similar organi-
zations.
- Sec. 7. State and Federal authority to site transmission facilities.
- Sec. 8. PUHCA exemption for RTOs.
- Sec. 9. Independent transmission companies.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Transmission networks are the backbone of
9 competitive power markets and increased interstate
10 commerce in electricity.

11 (2) Wholesale electric competition, already in
12 effect across the nation, and retail electric competi-
13 tion, adopted by nearly half of the States, depend on
14 adequate transmission networks to benefit electric
15 consumers.

16 (3) The expansion, enhancement, and improve-
17 ment of transmission facilities are necessary to
18 maintain and improve reliability of electric service.

19 (4) To support competitive power markets and
20 to maintain and improve reliability of electric serv-

1 ice, the regulation of transmission service must be
2 reformed.

3 **SEC. 3. SUSTAINABLE TRANSMISSION NETWORKS RULE-**
4 **MAKING.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by adding the following new section at
7 the end thereof:

8 **“SEC. 215. SUSTAINABLE TRANSMISSION NETWORKS RULE-**
9 **MAKING.**

10 “(a) RULEMAKING REQUIREMENT.—Within 1 year
11 after the enactment of this section, the Commission shall
12 establish, by rule, transmission pricing policies and stand-
13 ards for promoting the expansion and improvement of
14 interstate transmission networks through incentive-based,
15 performance-based, participant-funded, and/or cost-based
16 rate treatments to ensure reliability of the electric system,
17 to support interstate wholesale markets for electric power,
18 and expand transmission transfer capacity needed to sus-
19 tain wholesale competition. Policies and standards estab-
20 lished under this section shall specifically—

21 “(1) promote capital investment in the economi-
22 cally efficient enlargement of transmission networks
23 to reduce congestion on transmission networks and
24 provide accurate price signals so that new generation

1 and transmission is built where it provides the low-
2 est overall cost to consumers;

3 “(2) encourage improved operation of trans-
4 mission facilities and deployment of transmission
5 technologies to increase capacity and efficiency of
6 existing networks and reduce line losses, including
7 but not limited to high-capacity wires (including
8 high-temperature superconducting cables), power
9 electronics and information technologies (including
10 flexible alternating current transmission system
11 technologies), and high-voltage, direct current lines;
12 and

13 “(3) provide a return on equity that attracts
14 new investment in transmission facilities and reason-
15 ably reflects the financial, operational and other
16 risks taken by public utilities in restructuring trans-
17 mission assets.

18 “(b) LIMITATION ON THE AUTHORITY OF THIS SEC-
19 TION.—In the case of any transmission rate approved by
20 the Commission on or after the effective date of the rule
21 established under this section, the rate shall comply
22 with—

23 “(1) the policies and standards adopted pursu-
24 ant to this section as necessary or appropriate to im-

1 plement the requirements of subsection (a) of this
2 section; and

3 “(2) the procedural and other requirements of
4 this part, including the requirement of sections 205
5 and 206, that all rates, charges, terms and condi-
6 tions be just and reasonable and not unduly dis-
7 criminatory.”.

8 **SEC. 4. ELECTRIC RELIABILITY STANDARDS.**

9 Part II of the Federal Power Act (16 U.S.C 824 et
10 seq.) is amended by adding the following new section at
11 the end thereof:

12 **“SEC. 216. ELECTRIC RELIABILITY.**

13 “(a) DEFINITIONS.—For purposes of this section—

14 “(1) The term ‘bulk-power system’ means—

15 “(A) facilities and control systems nec-
16 essary for operating an interconnected electric
17 energy transmission network (or any portion
18 thereof); and

19 “(B) electric energy from generation facili-
20 ties needed to maintain transmission system re-
21 liability.

22 The term does not include facilities used in the local
23 distribution of electric energy.

24 “(2) The terms ‘Electric Reliability Organiza-
25 tion’ and ‘ERO’ mean the organization certified by

1 the Commission under subsection (c) the purpose of
2 which is to establish and enforce reliability stand-
3 ards for the bulk-power system, subject to Commis-
4 sion review.

5 “(3) The term ‘reliability standard’ means a re-
6 quirement, approved by the Commission under this
7 section, to provide for reliable operation of the bulk-
8 power system. The term includes requirements for
9 the operation of existing bulk-power system facilities
10 and the design of planned additions or modifications
11 to such facilities to the extent necessary to provide
12 for reliable operation of the bulk-power system, but
13 the term does not include any requirement to en-
14 large such facilities or to construct new transmission
15 capacity or generation capacity.

16 “(4) The term ‘reliable operation’ means oper-
17 ating the elements of the bulk-power system within
18 equipment and electric system thermal, voltage, and
19 stability limits so that instability, uncontrolled sepa-
20 ration, or cascading failures of such system will not
21 occur as a result of a sudden disturbance or unan-
22 ticipated failure of system elements.

23 “(5) The term ‘Interconnection’ means a geo-
24 graphic area in which the operation of bulk-power
25 system components is synchronized such that the

1 failure of one or more of such components may ad-
2 versely affect the ability of the operators of other
3 components within the system to maintain reliable
4 operation of the facilities within their control.

5 “(6) The term ‘transmission organization’
6 means a regional transmission organization, inde-
7 pendent system operator, independent transmission
8 provider, or other transmission organization finally
9 approved by the Commission for the operation of
10 transmission facilities.

11 “(7) The term ‘regional entity’ means an entity
12 having enforcement authority pursuant to subsection
13 (e)(4).

14 “(b) JURISDICTION AND APPLICABILITY.—(1) The
15 Commission shall have jurisdiction, within the United
16 States, over the ERO certified by the Commission under
17 subsection (c), any regional entities, and all users, owners
18 and operators of the bulk-power system, including but not
19 limited to the entities described in section 201(f), for pur-
20 poses of approving reliability standards established under
21 this section and enforcing compliance with this section. All
22 users, owners and operators of the bulk-power system
23 shall comply with reliability standards that take effect
24 under this section.

1 “(2) The Commission shall issue a final rule to imple-
 2 ment the requirements of this section not later than 180
 3 days after the date of enactment of this section.

4 “(c) CERTIFICATION.—Following the issuance of a
 5 Commission rule under subsection (b)(2), any person may
 6 submit an application to the Commission for certification
 7 as the Electric Reliability Organization (ERO). The Com-
 8 mission may certify one such ERO if the Commission de-
 9 termines that such ERO—

10 “(1) has the ability to develop and enforce, sub-
 11 ject to subsection (e)(2), reliability standards that
 12 provide for an adequate level of reliability of the
 13 bulk-power system;

14 “(2) has established rules that—

15 “(A) assure its independence of the users
 16 and owners and operators of the bulk-power
 17 system, while assuring fair stakeholder rep-
 18 resentation in the selection of its directors and
 19 balanced decisionmaking in any ERO com-
 20 mittee or subordinate organizational structure;

21 “(B) allocate equitably reasonable dues,
 22 fees, and other charges among end users for all
 23 activities under this section;

24 “(C) provide fair and impartial procedures
 25 for enforcement of reliability standards through

1 the imposition of penalties in accordance with
2 subsection (e) (including limitations on activi-
3 ties, functions, or operations, or other appro-
4 priate sanctions);

5 “(D) provide for reasonable notice and op-
6 portunity for public comment, due process,
7 openness, and balance of interests in developing
8 reliability standards and otherwise exercising its
9 duties; and

10 “(E) provide for taking, after certification,
11 appropriate steps to gain recognition in Canada
12 and Mexico.

13 “(d) RELIABILITY STANDARDS.—(1) The Electric
14 Reliability Organization shall file each reliability standard
15 or modification to a reliability standard that it proposes
16 to be made effective under this section with the Commis-
17 sion.

18 “(2) The Commission may approve by rule or order
19 a proposed reliability standard or modification to a reli-
20 ability standard if it determines that the standard is just,
21 reasonable, not unduly discriminatory or preferential, and
22 in the public interest. The Commission shall give due
23 weight to the technical expertise of the Electric Reliability
24 Organization with respect to the content of a proposed
25 standard or modification to a reliability standard and to

1 the technical expertise of a regional entity organized on
2 an Interconnection-wide basis with respect to a reliability
3 standard to be applicable within that Interconnection, but
4 shall not defer with respect to the effect of a standard
5 on competition. A proposed standard or modification shall
6 take effect upon approval by the Commission.

7 “(3) The Electric Reliability Organization shall
8 rebuttably presume that a proposal from a regional entity
9 organized on an Interconnection-wide basis for a reliability
10 standard or modification to a reliability standard to be ap-
11 plicable on an Interconnection-wide basis is just, reason-
12 able, and not unduly discriminatory or preferential, and
13 in the public interest.

14 “(4) The Commission shall remand to the Electric
15 Reliability Organization for further consideration a pro-
16 posed reliability standard or a modification to a reliability
17 standard that the Commission disapproves in whole or in
18 part.

19 “(5) The Commission, upon its own motion or upon
20 complaint, may order the Electric Reliability Organization
21 to submit to the Commission a proposed reliability stand-
22 ard or a modification to a reliability standard that ad-
23 dresses a specific matter if the Commission considers such
24 a new or modified reliability standard appropriate to carry
25 out this section.

1 “(6) The final rule adopted under subsection (b)(2)
2 shall include fair processes for the identification and time-
3 ly resolution of any conflict between a reliability standard
4 and any function, rule, order, tariff, rate schedule, or
5 agreement accepted, approved, or ordered by the Commis-
6 sion applicable to a transmission organization. Such trans-
7 mission organization shall continue to comply with such
8 function, rule, order, tariff, rate schedule or agreement ac-
9 cepted, approved, or ordered by the Commission until—

10 “(A) the Commission finds a conflict exists
11 between a reliability standard and any such
12 provision;

13 “(B) the Commission orders a change to
14 such provision pursuant to section 206 of this
15 part; and

16 “(C) the ordered change becomes effective
17 under this part.

18 If the Commission determines that a reliability standard
19 needs to be changed as a result of such a conflict, it shall
20 order the ERO to develop and file with the Commission
21 a modified reliability standard under paragraph (4) or (5)
22 of this subsection.

23 “(e) ENFORCEMENT.—(1) The ERO may impose,
24 subject to paragraph (2), a penalty on a user or owner
25 or operator of the bulk-power system for a violation of a

1 reliability standard approved by the Commission under
2 subsection (d) if the ERO, after notice and an opportunity
3 for a hearing—

4 “(A) finds that the user or owner or operator
5 has violated a reliability standard approved by the
6 Commission under subsection (d); and

7 “(B) files notice and the record of the pro-
8 ceeding with the Commission.

9 “(2) A penalty imposed under paragraph (1) may
10 take effect not earlier than the 31st day after the electric
11 reliability organization files with the Commission notice of
12 the penalty and the record of proceedings. Such penalty
13 shall be subject to review by the Commission, on its own
14 motion or upon application by the user, owner or operator
15 that is the subject of the penalty filed within 30 days after
16 the date such notice is filed with the Commission. Applica-
17 tion to the Commission for review, or the initiation of re-
18 view by the Commission on its own motion, shall not oper-
19 ate as a stay of such penalty unless the Commission other-
20 wise orders upon its own motion or upon application by
21 the user, owner or operator that is the subject of such
22 penalty. In any proceeding to review a penalty imposed
23 under paragraph (1), the Commission, after notice and op-
24 portunity for hearing (which hearing may consist solely
25 of the record before the electric reliability organization and

1 opportunity for the presentation of supporting reasons to
2 affirm, modify, or set aside the penalty), shall by order
3 affirm, set aside, reinstate, or modify the penalty, and,
4 if appropriate, remand to the electric reliability organiza-
5 tion for further proceedings. The Commission shall imple-
6 ment expedited procedures for such hearings.

7 “(3) On its own motion or upon complaint, the Com-
8 mission may order compliance with a reliability standard
9 and may impose a penalty against a user or owner or oper-
10 ator of the bulk-power system, if the Commission finds,
11 after notice and opportunity for a hearing, that the user
12 or owner or operator of the bulk-power system has en-
13 gaged or is about to engage in any acts or practices that
14 constitute or will constitute a violation of a reliability
15 standard.

16 “(4) The Commission shall establish regulations au-
17 thorizing the ERO to enter into an agreement to delegate
18 authority to a regional entity for the purpose of proposing
19 reliability standards to the ERO and enforcing reliability
20 standards under paragraph (1) if—

21 “(A) the regional entity is governed by—

22 “(i) an independent board;

23 “(ii) a balanced stakeholder board; or

24 “(iii) a combination independent and bal-
25 anced stakeholder board;

1 “(B) the regional entity otherwise satisfies the
2 provisions of subsection (c)(1) and (2); and

3 “(C) the agreement promotes effective and effi-
4 cient administration of bulk-power system reliability.
5 The Commission may modify such delegation. The ERO
6 and the Commission shall rebuttably presume that a pro-
7 posal for delegation to a regional entity organized on an
8 Interconnection-wide basis promotes effective and efficient
9 administration of bulk-power system reliability and should
10 be approved. Such regulation may provide that the Com-
11 mission may assign the ERO’s authority to enforce reli-
12 ability standards under paragraph (1) directly to a re-
13 gional entity consistent with the requirements of this para-
14 graph.

15 “(5) The Commission may take such action as is nec-
16 essary or appropriate against the ERO or a regional entity
17 to ensure compliance with a reliability standard or any
18 Commission order affecting the ERO or a regional entity.

19 “(6) Any penalty imposed under this section shall
20 bear a reasonable relation to the seriousness of the viola-
21 tion and shall take into consideration the efforts of such
22 user, owner, or operator to remedy the violation in a time-
23 ly manner.

24 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
25 NIZATION RULES.—The Electric Reliability Organization

1 shall file with the Commission for approval any proposed
2 rule or proposed rule change, accompanied by an expla-
3 nation of its basis and purpose. The Commission, upon
4 its own motion or complaint, may propose a change to the
5 rules of the Electric Reliability Organization. A proposed
6 rule or proposed rule change shall take effect upon a find-
7 ing by the Commission, after notice and opportunity for
8 comment, that the change is just, reasonable, not unduly
9 discriminatory or preferential, is in the public interest, and
10 satisfies the requirements of subsection (c).

11 “(g) RELIABILITY REPORTS.—The Electric Reli-
12 ability Organization shall conduct periodic assessments of
13 the reliability and adequacy of the bulk-power system in
14 North America.

15 “(h) COORDINATION WITH CANADA AND MEXICO.—
16 The President is urged to negotiate international agree-
17 ments with the governments of Canada and Mexico to pro-
18 vide for effective compliance with reliability standards and
19 the effectiveness of the Electric Reliability Organization
20 in the United States and Canada or Mexico.

21 “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-
22 ability Organization shall have authority to develop and
23 enforce compliance with reliability standards for only the
24 bulk-power system.

1 “(2) This section does not authorize the Electric Reli-
2 ability Organization or the Commission to order the con-
3 struction of additional generation or transmission capacity
4 or to set and enforce compliance with standards for ade-
5 quacy or safety of electric facilities or services.

6 “(3) Nothing in this section shall be construed to pre-
7 empt any authority of any State to take action to ensure
8 the safety, adequacy, and reliability of electric service
9 within that State, as long as such action is not incon-
10 sistent with any reliability standard, except that the State
11 of New York may establish rules that result in greater
12 reliability within that State, as long as such action does
13 not result in lesser reliability outside the State than that
14 provided by the reliability standards.

15 “(4) Within 90 days of the application of the Electric
16 Reliability Organization or other affected party, and after
17 notice and opportunity for comment, the Commission shall
18 issue a final order determining whether a State action is
19 inconsistent with a reliability standard, taking into consid-
20 eration any recommendation of the Electric Reliability Or-
21 ganization.

22 “(5) The Commission, after consultation with the
23 Electric Reliability Organization and the State taking ac-
24 tion, may stay the effectiveness of any State action, pend-
25 ing the Commission’s issuance of a final order.

1 “(j) REGIONAL ADVISORY BODIES.—The Commis-
2 sion shall establish a regional advisory body on the petition
3 of at least two-thirds of the States within a region that
4 have more than one-half of their electric load served within
5 the region. A regional advisory body shall be composed or
6 of one member from each participating State in the region,
7 appointed by the Governor of each State, and may include
8 representatives of agencies, States, and provinces outside
9 the United States. A regional advisory body may provide
10 advice to the Electric Reliability Organization, a regional
11 entity, or the Commission regarding the governance of an
12 existing or proposed regional entity within the same re-
13 gion, whether a standard proposed to apply within the re-
14 gion is just, reasonable, not unduly discriminatory or pref-
15 erential, and in the public interest, whether fees proposed
16 to be assessed within the region are just, reasonable, not
17 unduly discriminatory or preferential, and in the public
18 interest and any other responsibilities requested by the
19 Commission. The Commission may give deference to the
20 advice of any such regional advisory body if that body is
21 organized on an Interconnection-wide basis.

22 “(k) APPLICATION TO ALASKA AND HAWAII.—The
23 provisions of this section do not apply to Alaska or Ha-
24 waii.”.

1 **SEC. 5. DISPOSITION OF PROPERTY.**

2 Section 203 of the Federal Power Act (16 U.S.C.
3 824b) is repealed.

4 **SEC. 6. PROMOTION OF VOLUNTARY DEVELOPMENT OF RE-**
5 **GIONAL TRANSMISSION ORGANIZATIONS,**
6 **INDEPENDENT TRANSMISSION PROVIDERS,**
7 **AND SIMILAR ORGANIZATIONS.**

8 Part II of the Federal Power Act (16 U.S.C. 824 et
9 seq.) is amended by adding at the end thereof the fol-
10 lowing new section:

11 **“SEC. 217. PROMOTION OF VOLUNTARY DEVELOPMENT OF**
12 **REGIONAL TRANSMISSION ORGANIZATIONS,**
13 **INDEPENDENT TRANSMISSION PROVIDERS,**
14 **AND SIMILAR ORGANIZATIONS.**

15 “(a) IN GENERAL.—The Commission may approve
16 and may encourage the formation of regional transmission
17 organizations, independent transmission providers, and
18 similar organizations (referred to in this section as ‘trans-
19 mission organizations’) for the purpose of enhancing the
20 transmission of electric energy in interstate commerce.
21 Among options for the formation of a transmission organi-
22 zation, the Commission shall prefer those in which—

23 “(1) participation in the organization by trans-
24 mitting utilities is voluntary;

1 “(2) the form, structure, and operating entity
2 of the organization are approved of by participating
3 transmitting utilities; and

4 “(3) market incentives exist to promote invest-
5 ment for expansion of transmission facilities and for
6 the introduction of new transmission technologies
7 within the territory of the organization.

8 “(b) CONDITIONS.—No order issued under this Act
9 shall be conditioned upon or require a transmitting utility
10 to transfer operational control of jurisdictional facilities
11 to an independent system operator or other transmission
12 organization.

13 “(c) COMPLAINT.—In addition to any other rights or
14 remedies it may have under this Act, any entity serving
15 electric load that is denied services by a transmission orga-
16 nization that the transmission organization makes avail-
17 able to other load serving entities shall be entitled to file
18 a complaint with the Commission concerning the denial
19 of such services. If the Commission shall find, after an
20 evidentiary hearing on the record, that the denial of serv-
21 ices complained of was unjust, unreasonable, unduly dis-
22 criminatory or preferential, or contrary to the public inter-
23 est, the Commission may order the provision of such serv-
24 ices at rates and on terms and conditions that shall be
25 in accordance with section 215 of this Act.”.

1 **SEC. 7. STATE AND FEDERAL AUTHORITY TO SITE TRANS-**
2 **MISSION FACILITIES.**

3 Part II of the Federal Power Act (16 U.S.C. 824 et
4 seq.) is amended by adding at the end thereof the fol-
5 lowing new section:

6 **“SEC. 218. STATE AND FEDERAL AUTHORITY TO SITE**
7 **TRANSMISSION FACILITIES.**

8 “(a) In order to ensure the availability of adequate
9 capacity to provide for reliable, economic transmission of
10 electric energy in interstate commerce, upon enactment of
11 this section, and after notice and opportunity for com-
12 ment, the Commission shall publish a report, which it shall
13 revise each year thereafter, describing areas where addi-
14 tional facilities are necessary to increase electric trans-
15 mission capacity. The report shall include information
16 from the regional transmission organization planning
17 processes explaining the feasibility of providing additional
18 transmission capacity through existing transmission rights
19 of way, and shall assess efforts to promote adequate and
20 economically efficient transmission of electricity through
21 the introduction of new transmission technologies, and to
22 encourage investment in new and existing transmission fa-
23 cilities. The Commission shall rely upon information pro-
24 vided by regional transmission organizations developed in
25 conjunction with States through regional transmission or-
26 ganization planning processes, information provided by

1 State public utility commissions, and such other informa-
2 tion about transmission constraints, reliability, and prices
3 of electric energy as the Commission deems appropriate.
4 In the report, the Commission shall review the status of
5 facilities for which an application has been submitted pur-
6 suant to subsection (b).

7 “(b) A regional transmission organization or a re-
8 gional transmission entity which has submitted an applica-
9 tion to a State or local agency for approval of transmission
10 facilities to provide additional transmission capacity in an
11 area identified in the report required by subsection (a)
12 shall notify the Commission by providing a copy of the
13 application, including a description of the facilities and the
14 proposed route. The regional transmission organization
15 shall submit to the Commission with a copy of the applica-
16 tion a statement assessing the feasibility of upgrading ex-
17 isting transmission facilities to provide additional capacity
18 in an area identified in the report required by subsection
19 (a).

20 “(c) If a regional transmission organization or a re-
21 gional transmission entity has not received approval of its
22 application to the State to construct transmission facilities
23 in an area identified in the report required by subsection
24 (a) within one year of the notice to the Commission pursu-
25 ant to subsection (b), or within two years of such notice

1 has not received all permits and approvals required to con-
2 struct the facilities, the Commission may, after consid-
3 ering the feasibility of upgrading existing facilities to in-
4 crease electric transmission capacity, upon its own motion
5 or upon request, and after notice and opportunity for
6 hearing, issue a certificate of public convenience and ne-
7 cessity to construct a proposed transmission facility if it
8 finds the facilities to be authorized by the certificate are
9 or will be required by public convenience and necessity.

10 “(d) The Commission shall have the power to attach
11 to the issuance of such certificate and to the exercise of
12 the rights granted thereunder such reasonable terms and
13 conditions related to the construction of such facility as
14 the public convenience and necessity may require.

15 “(e) The Commission shall require that construction
16 on the proposed transmission facility commence within 18
17 months after the Commission grants an issuance of certifi-
18 cate. If construction does not commence within the allowed
19 time, the certificate reverts back to the Commission. The
20 owner of the proposed transmission facility may apply for
21 up to two six-month extensions.

22 “(f) The Commission shall issue its final decision in
23 the certificate proceeding within 18 months after the filing
24 of a request for a certificate or the initiation of pro-
25 ceedings on its own motion.

1 “(g) When any holder of a certificate of public con-
 2 venience and necessity for electric transmission facilities
 3 issued by the Commission pursuant to subsection (c) can-
 4 not acquire by contract, or is unable to agree with the
 5 owner of the property to the compensation to be paid for
 6 the necessary rights-of-way to construct, operate and
 7 maintain such transmission facility, it may acquire the
 8 same by the exercise of the right of eminent domain in
 9 the district court of the United States for the district in
 10 which such property may be located, or in the State
 11 courts.”.

12 **SEC. 8. PUBLIC UTILITY HOLDING COMPANY ACT EXEMP-**
 13 **TION FOR RTOS.**

14 The Public Utility Holding Company Act (15 U.S.C.
 15 79 et seq.) is amended—

16 (1) by redesignating section 36 as section 37;
 17 and

18 (2) by inserting after section 35 the following:

19 **“SEC. 36. SAVINGS CLAUSE.**

20 “(a) IN GENERAL.—This Act shall not apply to a
 21 multistate independent transmission company or to any
 22 action to form, modify, finance, sell, purchase, operate, or
 23 otherwise affect such an organization.

24 “(b) DEFINITIONS.—For purposes of subsection (a):

1 “(1) The term ‘multistate independent trans-
 2 mission’ means any person which owns or operates
 3 facilities in more than one State used for the trans-
 4 mission of electric energy in interstate commerce
 5 and which—

6 “(A) is not engaged in the generation or
 7 sale of electric energy; or

8 “(B) the Federal Energy Regulatory Com-
 9 mission determines is not a market participant
 10 (within the meaning of the Commission’s rules
 11 applicable to regional transmission organiza-
 12 tions).

13 “(2) The term ‘transmission of electric energy
 14 in interstate commerce’ shall have the meaning given
 15 such term in section 201 of the Federal Power
 16 Act.”.

17 **SEC. 9. INDEPENDENT TRANSMISSION COMPANIES.**

18 (a) IN GENERAL.—Section 1033 of the Internal Rev-
 19 enue Code of 1986 (relating to involuntary conversions)
 20 is amended by redesignating subsection (k) as subsection
 21 (l) and by inserting after subsection (j) the following new
 22 subsection:

23 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-
 24 ERAL ENERGY REGULATORY COMMISSION OR STATE
 25 ELECTRIC RESTRUCTURING POLICY.—

1 “(1) IN GENERAL.—For purposes of this sub-
2 title, if a taxpayer elects the application of this sub-
3 section to a qualifying electric transmission trans-
4 action—

5 “(A) such transaction shall be treated as
6 an involuntary conversion to which this section
7 applies, and

8 “(B) exempt utility property shall be treat-
9 ed as property which is similar or related in
10 service or use to the property disposed of in
11 such transaction.

12 “(2) EXTENSION OF REPLACEMENT PERIOD.—
13 In the case of any involuntary conversion described
14 in paragraph (1), subsection (a)(2)(B) shall be ap-
15 plied by substituting ‘4 years’ for ‘2 years’ in clause
16 (i) thereof.

17 “(3) QUALIFYING ELECTRIC TRANSMISSION
18 TRANSACTION.—For purposes of this subsection, the
19 term ‘qualifying electric transmission transaction’
20 means any sale or other disposition before January
21 1, 2009, of—

22 “(A) property used in the trade or business
23 of providing electric transmission services, or

24 “(B) any stock or partnership interest in a
25 corporation or partnership, as the case may be,

1 whose principal trade or business consists of
2 providing electric transmission services,
3 but only if such sale or disposition is to an inde-
4 pendent transmission company.

5 “(4) INDEPENDENT TRANSMISSION COM-
6 PANY.—For purposes of this subsection, the term
7 ‘independent transmission company’ means—

8 “(A) a regional transmission organization
9 approved by the Federal Energy Regulatory
10 Commission,

11 “(B) a person—

12 “(i) who the Federal Energy Regu-
13 latory Commission determines in its au-
14 thorization of the transaction under section
15 203 of the Federal Power Act (16 U.S.C.
16 823b) is not a market participant within
17 the meaning of such Commission’s rules
18 applicable to regional transmission organi-
19 zations, and

20 “(ii) whose transmission facilities to
21 which the election under this subsection
22 applies are under the operational control of
23 a Federal Energy Regulatory Commission-
24 approved regional transmission organiza-
25 tion before the close of the period specified

1 in such authorization, but not later than
2 the close of the period applicable under
3 subsection (a)(2)(B) as extended under
4 paragraph (2), or

5 “(C) in the case of facilities subject to the
6 exclusive jurisdiction of the Public Utility Com-
7 mission of Texas, a person which is approved by
8 that Commission as consistent with Texas State
9 law regarding an independent transmission or-
10 ganization.

11 “(5) EXEMPT UTILITY PROPERTY.—For pur-
12 poses of this subsection—

13 “(A) IN GENERAL.—The term ‘exempt
14 utility property’ means property used in the
15 trade or business of—

16 “(i) generating, transmitting, distrib-
17 uting, or selling electricity, or

18 “(ii) producing, transmitting, distrib-
19 uting, or selling natural gas.

20 “(B) NONRECOGNITION OF GAIN BY REA-
21 SON OF ACQUISITION OF STOCK.—Acquisition of
22 control of a corporation shall be taken into ac-
23 count under this section with respect to a quali-
24 fying electric transmission transaction only if
25 the principal trade or business of such corpora-

1 tion is a trade or business referred to in sub-
2 paragraph (A).

3 “(6) SPECIAL RULE FOR CONSOLIDATED
4 GROUPS.—In the case of a corporation which is a
5 member of an affiliated group filing a consolidated
6 return, such corporation shall be treated as satis-
7 fying the purchase requirement of subsection (a)(2)
8 with respect to any qualifying electric transmission
9 transaction engaged in by such corporation to the
10 extent such requirement is satisfied by another
11 member of such group.

12 “(7) ELECTION.—An election under paragraph
13 (1), once made, shall be irrevocable.”

14 (b) EXCEPTION FROM GAIN RECOGNITION UNDER
15 SECTION 1245.—Subsection (b) of section 1245 of such
16 Code is amended by adding at the end the following new
17 paragraph:

18 “(9) DISPOSITIONS TO IMPLEMENT FEDERAL
19 ENERGY REGULATORY COMMISSION OR STATE ELEC-
20 TRIC RESTRUCTURING POLICY.—At the election of
21 the taxpayer, the amount of gain which would (but
22 for this paragraph) be recognized under this section
23 on any qualified electric transmission transaction (as
24 defined in section 1033(k)) for which an election
25 under section 1033 is made shall be reduced by the

1 aggregate reduction in the basis of section 1245
2 property held by the taxpayer or, if insufficient, by
3 a member of an affiliated group which includes the
4 taxpayer at any time during the taxable year in
5 which such transaction occurred. The manner and
6 amount of such reduction shall be determined under
7 regulations prescribed by the Secretary.”

8 (c) EFFECTIVE DATE.—The amendments made by
9 subsections (a) and (b) of this section shall apply to trans-
10 actions occurring after the date of the enactment of this
11 Act.

12 (d) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-
13 ERAL ENERGY REGULATORY COMMISSION OR STATE
14 ELECTRIC RESTRUCTURING POLICY.—

15 (1) IN GENERAL.—Subparagraph (A) of section
16 355(e)(3) of such Code (relating to special rules re-
17 lating to acquisitions) is amended by inserting after
18 clause (iv) the following new clause:

19 “(v) The acquisition of stock in any
20 controlled corporation in a qualifying elec-
21 tric transmission transaction (as defined in
22 section 1033(k)).”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall apply to distributions after
3 the date of the enactment of this Act.

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